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Opinion of Harry M. Daugherty, Attorney General, dated 23 August 1922, to the Secretary of the Navy regarding the authority of the Secretary to transfer to other branches of the Government certain tracts of land acquired by the Navy Department under certain Acts of Congress (33 Opinions of the Attorneys General 288). Each parcel was acquired by the Navy under specific authority of Congress for naval purposes and improvements have been made on the land out of naval appropriations. In view of the fact that in each instance the tracts were acquired under specific Congressional grant, there is no authority by which the Secretary of the Navy could surrender control by permanent transfer to the other executive departments, however desirable the proposed governmental uses may be. The tracts could only be permanently transferred by specific authority of the Congress.

In an opinion rendered to the Secretary of the Navy by Harland F. Stone 28 October 1924 (34 Opinions of the Attorneys General 320). This opinion involves a form of agreement whereby a non-exclusive license for all purposes except for international communications would be granted to the licensee to make, use and sell apparatus embodying certain inventions and to practice the processes and methods of certain patents relating to radio communication and owned by the United States. The question arose as to whether the Secretary of the Navy had the power to grant a non-exclusive, non-transferable, revocable license under a patent acquired by him for the Government. Pointing out that the Constitution gives to Congress the power to dispose of property belonging to the United States, Mr. Stone stated:

"It follows, then, that property once acquired by the Government may not be sold, or title otherwise disposed of, except under the authority of Congress, and in the manner provided by law, and this prohibition extends to any attempt to alienate a part of the property, or in general, in any manner to limit or restrict the full and exclusive ownership of the United States therein. . . .The United States has a right to dispose of realty acquired under the law . . . but it has been fully established that Congress is the only authority to be invoked, where there is, in fact, an alienation or what amounts to a transfer or surrender of Government property, by which the title, control or possession of the Government is lost, reduced, or abridged." (At pages 322-323)

". . .it has been uniformly held that revocable licenses, in the public interest, for the use of Government property, could be given by the head of the appropriate Department . . .The power has been

frequently exercised by such Departments in accordance with these opinions. . . There has been no prohibition by Congress so far as I am informed, of the granting of licenses of the nature proposed. . . . the head of a Government Department does not have to show statutory authority for everything he does. Reasonable latitude in the exercise of discretion is implied." (At page 326)

". . . while the Constitution prohibits the alienation of the title, ownership or control of Government property without Congressional sanction, Congress has given the Head of a Department authority and control over the 'use' and preservation of such property in his charge." (At page 327)

Quoting from an earlier opinion, Mr. Stone stated that:

"'. . . numerous instances of the granting of such revocable licenses for the use of portions of Government lands, and the opinion itself sustained the issuance of a revocable license. . . ." (At page 327)

"The construction of the law as to the implied powers of the Head of a Department to grant revocable licenses for occupancy of land, arising from long continued use of such power, without intervention by Congress, is adverted to in many opinions by my predecessors. . . ." (At page 328)

An opinion by William D. Mitchell, Acting Attorney General, to the Secretary of the Treasury, dated 9 July 1927 (35 Opinions of the Attorneys General 245). The opinion of the Attorney General is requested as to whether any vessel or vehicle acquired by statute by the Treasury Department for the enforcement of the prohibition and customs law may, when no longer needed for official use, be transferred to some other activity of the Department or another executive department. A previous decision of the Attorney General held that there would be no question that transfers of real and personal property between Departments could be made provided the transactions did not involve a change of title. In the instant situation the title to the vessels or vehicles was in the United States under the Act. Therefore, their change from one agency to another did not effect any change in ownership. Therefore, it was held in this opinion that transfer could be made to the other executive departments or activities of the Treasury Department providing such departments or activities had statutory authority to acquire and use same and had appropriations available to pay for their maintenance, repair and operation.

The opinion of the Acting Attorney General, J. Crawford Biggs, to the Secretary of State, 27 February 1934. (37 Opinions of the Attorneys General 459). This involved the transfer of certain lands, buildings and movable property from the Navy Department to the Secretary of the Interior by Executive Order. Since this particular property was acquired by Executive action and not by specific authority of Congress for a particular purpose, the President has ample power to discuss the proposed transfer. Distinction is made from a case wherein property is acquired for specific purposes under specific authority of the Congress.